

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Interconnection and Resale
Obligations Pertaining to
Commercial Mobile Radio Services

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)
) CC Docket No. 94-54
)
)

To: The Commission

REPLY COMMENTS
OF
THE SOUTHERN COMPANY

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Dated: November 22, 1996

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EXECUTIVE SUMMARY

Southern believes that the Commission should implement CMRS-to-CMRS roaming capability on a service-by-service basis first. While automatic roaming may be achieved quickly between technically similar services (PCS-to-PCS and SMR-to-SMR), technology needs to develop further in order to accomplish full scale carrier-to-carrier roaming in the CMRS markets. Southern also believes, however, that simply relying on market forces to foster the development of roaming will not be adequate in the more complex CMRS market that exists today. Rather, Southern believes that the public will be better served by a mandate from the Commission which will require carriers to negotiate these agreements. In fact, Southern believes that a requirement to enter into roaming arrangements will go a long way to facilitate voluntary negotiations among carriers and avoid protracted complaint proceedings which otherwise might be required to obtain the roaming arrangements which customers desire.

Southern also believes that the Commission should address technical issues which are critical to facilitating roaming. Specifically, because there are no commonly designated control channels in the SMR industry available for carriers to use throughout the United States, the Commission should take steps to identify common control channels for the SMR industry as well as for other segments of the industry where appropriate.

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The Southern Company ("Southern") by its attorneys and pursuant to Section 1.415 of the Federal Communications Commission's Rules, submits these Reply Comments in response to the Third Notice of Proposed Rule Making ("Third NPRM") released August 15, 1996 in the above-captioned proceeding.^{1/}

BACKGROUND

1. Southern has been an active participant in this proceeding, as it has filed Comments and Reply Comments during the first and second phases of this proceeding when the Commission was generally inquiring about potential

^{1/} Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Third Notice of Proposed Rule Making, 61 Fed. Reg. 43977 (August 27, 1996).

interconnection regulations that would create regulatory parity among CMRS providers. During that period, Southern advocated CMRS-to-CMRS roaming regulations that took into account the differences between CMRS services and technology.

2. Southern still believes that the Commission must implement full CMRS-to-CMRS roaming capability on a service-by-service basis first. While automatic roaming may be achieved quickly between technically similar services (PCS to PCS and SMR to SMR), technology needs to develop further in order to accomplish full scale carrier-to-carrier roaming in the CMRS market. Upon review of the Comments filed in the Third NPRM, it appears that no commenter recognized or addressed the specific needs of each individual service or technology, particularly the Specialized Mobile Radio ("SMR") Service. To this end, Southern submits these Reply Comments in response to issues raised by primarily cellular providers and some large Personal Communications Service ("PCS") providers who oppose the Commission's tentative decision to promulgate regulations concerning automatic roaming among CMRS providers.

INTRODUCTION

3. Southern supports the Commission's proposal to impose mandatory roaming requirements on all CMRS providers provided it is done on a phased-in basis, and applauds the Commission's

decision to impose manual roaming requirements in the interim.^{2/} Southern believes that the vast majority of the Comments filed in this Third NPRM are misguided in urging the Commission to forbear from imposing any CMRS automatic roaming obligations.

I. The Legal Framework For Regulating CMRS Suggests That The Roaming Requirements Be Applied Evenly

4. Congress charged the FCC to promote competition and reduce regulation in order to secure lower prices and higher quality of service for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.^{3/} Although the Telecommunications Act of 1996 provides an overall regulatory framework for the FCC in regulating the telecommunications industry, the FCC cannot overlook the congressional mandate of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") where Congress directed the Commission to establish regulatory parity among CMRS providers, which was the initial impetus for this proceeding.^{4/}

5. Regulatory symmetry would appear to dictate that the automatic roaming arrangements now required in the cellular industry be shared by other CMRS providers to the degree

^{2/} Prior to the implementation of the new manual roaming requirement, Southern was already offering manual roaming to customers of the only competing iDEN technology SMR provider in its service area, Nextel.

^{3/} Second Report and Order and Third NPRM at 2.

^{4/} Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

technically and economically feasible. Manual roaming, although an important first step, is not enough to create the level regulatory playing field that Congress envisioned in the Budget Act. Waiting for the market evolution of roaming services to occur, as some commenters suggest,^{5/} prevents subscribers from gaining access to wireless services in other regions, widens the headstart gap between entrenched CMRS providers and new entrants, and engenders anticompetitive behavior among entrenched CMRS providers in the area of roaming.

6. Moreover, each of the commenters uses the cellular industry as the model for successful market-driven roaming services. The cellular model is an inappropriate example of whether regulatory intervention is necessary for one simple reason. During the introduction of cellular, it was the only wireless technology aimed at meeting consumer mobile telecommunications needs.^{6/} In this regard, there were few hurdles to overcome in developing ubiquitous roaming capability. The cellular industry, for example, had the benefit of a common set of control channels nationwide. Today, however, the CMRS marketplace is more complex. With the differences in technology,

^{5/} Rural Telecommunications Group ("RTG") at 2, GTE Mobilnet ("GTE") passim, Cellular Telecommunications Association ("CTIA") at 10, Century Cellnet, Inc. ("Century") at 1, 360o Communications ("360o") at 2, Rural Cellular Association ("RCA") at 1, Vanguard Cellular at 3.

^{6/} Although SMR service was also available, this service was primarily aimed at meeting radio dispatch needs of industrial users.

including equipment and frequencies, it will be more difficult for automatic roaming to naturally evolve without some regulatory intervention.

7. Moreover, even if the marketplace evolves to full CMRS roaming as with the cellular industry, FCC regulatory intervention is still necessary to address the differences in technology, the headstart dilemma, and the issues concerning affiliation agreements. These issues are not as speculative as some commenters suggests but, as discussed more fully below, are real and imminent issues which should be addressed by regulatory guidance from the agency.

II. Automatic Roaming Protects Consumers and Is in the Public Interest

8. As documented in the Comments of Radiofone, Inc. ("Radiofone") and Western Wireless Corporation ("WWC"), existing CMRS providers who have a headstart in the wireless mobile service not only have the incentive to discriminate in roaming arrangements, but indeed have discriminated against other CMRS providers for roaming service.^{2/} Also, the cellular industry admits that discrimination in roaming arrangements between cellular providers is widespread, especially where affiliate

^{2/} Radiofone at 1-2 and WWC at 3-8. See also, Comments of the Alliance of Independent Wireless Operators ("AIW") at 16, indicating that carriers regularly threaten to cancel roaming agreements for improper reasons.

arrangements are involved. Southern submits that with the introduction of competition to the cellular industry by PCS and wide-area SMR providers, an additional incentive to discriminate or unreasonably deny roaming arrangements by entrenched CMRS providers is likely. New entrants will not have viable options to obtain automatic roaming if incumbent providers unreasonably deny such agreements. The Commission should not take lightly the Comments of WWC that incumbent cellular providers are resisting automatic roaming agreements with PCS providers.^{8/}

9. Southern is concerned that anticompetitive behavior related to roaming arrangements could arise in the wide-area SMR marketplace. Nextel, the other large wide-area SMR provider, has a nationwide footprint. Customers of both Southern and Nextel will be well served to be able to roam easily onto both systems. As mentioned above, Nextel's customers have been able to manually roam onto Southern's system even before the adoption of the new manual roaming requirements. Nextel now appears to be resisting the obligation to provide roaming.^{9/} For the protection of competition in CMRS industry, and particularly the SMR industry, Southern urges the Commission to promulgate phased-in mandatory automatic roaming regulations. Furthermore, automatic roaming regulations will protect consumers. The Commission correctly

^{8/} WWC at 3-5.

^{9/} Nextel seeks reconsideration of the manual roaming requirement. The technical justification offered by Nextel, in Southern's view, is inaccurate based on Southern's ability to offer Nextel customers service on its system.

recognized that roaming is necessary and is highly valued by subscribers.^{10/} Automatic roaming provides subscribers with convenient access to other wireless systems without the hassles of having to first contract with the host carrier. Southern supports AIW's Comments that subscribers are entitled to convenient access.^{11/} Without automatic roaming rules in place, subscribers are not only inconvenienced by the proactive step needed to roam, but may be denied the ability to roam to other CMRS systems, and could be forced to pay roaming charges which are unreasonably high.^{12/}

10. Failure to enact automatic roaming regulations is inconsistent with the public interest. Correctly applied on a phased-in basis, automatic roaming is a good concept for the CMRS marketplace in that it promotes competition and provides customers with access to out-of-region wireless markets. Without automatic roaming, regional CMRS providers, like Southern, whose operating territory is large but not nationwide, cannot offer its subscribers access to other desirable markets.

11. Mandatory requirements for automatic roaming on a service-by-service basis also creates an atmosphere for carriers to negotiate in good faith. Southern disagrees with the Comments

^{10/} Third NPRM at 8.

^{11/} AIW at 3-4.

^{12/} The FCC recognized that roaming revenues are the fastest growing revenue source for cellular providers. Third NPRM at 8.

of RTG which argue that a blanket roaming agreement negotiated by one carrier would apply to all carriers under the nondiscrimination principle.^{13/} Embodied in the nondiscrimination case law is the concept that "similarly situated" individuals must be offered the same terms and conditions. Therefore, a roaming arrangement between large carriers may not necessarily need to mirror that of a regional or rural carrier whose service area is not comparable to that of a larger CMRS provider. Moreover, smaller or newer carriers (and their customers) would greatly benefit from the automatic roaming provisions, as they would require larger, well-entrenched providers to come to the bargaining table. Under the current regulatory regime, a CMRS provider is not obligated to negotiate carrier-to-carrier roaming arrangements. Southern believes that, faced with a legal requirement to provide roaming, carriers will much more quickly negotiate reasonable roaming arrangements.

III. The FCC Must Carefully Craft Automatic Roaming Rules to Achieve CMRS-to-CMRS Roaming on a Reasonable Basis

A. The FCC Must Phase-In Full CMRS-to-CMRS Roaming

12. Southern understands that full CMRS-to-CMRS automatic roaming presents technical problems. Nevertheless, this issue should not preclude the Commission from moving forward on a phased-in basis with this much needed requirement. Southern suggests that the Commission begin by requiring technically

^{13/} RTG at 7.

similar services (i.e., cellular-to-cellular, SMR-to-SMR) to meet automatic roaming requirements, and phase in complete CMRS-to-CMRS automatic roaming over time as the technology permits.^{14/} In this manner, concerns about costs to implement automatic roaming can be addressed.^{15/} Southern believes that the new automatic roaming rules should encompass the principle of non-discrimination consistent with existing common carriers principles found in Section 202 of the Communications Act. Therefore, CMRS providers should not be allowed to offer more favorable terms to their affiliates.

B. The FCC Should Establish Uniform Control Channels

13. Southern also strongly urges the Commission to address the need for uniform control channels to facilitate roaming in general, especially in the SMR industry. Historically the FCC has not designated a common set of channels which can activate a roaming call in the SMR industry. In the cellular industry, these control channels were pre-designated and manufacturers were able to produce a standard mobile unit to accommodate these channels. In the SMR industry, although roaming is not impossible without uniform control channels, having such channels would greatly facilitate automatic roaming between carriers.

^{14/} Where technically possible PCS-to-cellular or cellular-to-SMR automatic should also be required. According to WWC, PCS-to-cellular automatic roaming is already possible and agreements have been reached. WWC at 4.

^{15/} See Comments of CTIA at 17.

14. The FCC could consider several options for instituting common control channels. For example, the Commission could designate approximately 40 (25 kHz) channels from the "to be auctioned" 2.3 GHz band to be used as control channels for all CMRS services.^{16/} This equates to only one (1) MHz of the total 30 MHz of spectrum slated to be auctioned. Since the 2.3 GHz band has been designated for wireless service in general, setting aside 1 MHz of the spectrum as control channels will be beneficial even for these upcoming (or already existing) wireless services which if regulated as CMRS would also have to adhere to the CMRS roaming obligations. Secondly, to relieve immediate problems, the FCC could at a minimum designate control channels to facilitate SMR-to-SMR automatic roaming by carving out 40 (25 kHz) channels from the General Category pool which has been reclassified as SMR service. In this regard, all wide-area SMR providers will have common control channels.

C. Manual and Automatic Roaming Rules Should Not Sunset Until Full CMRS-to-CMRS Roaming is Accomplished

15. The Commission's ultimate goal should be to obtain full carrier-to-carrier roaming on an automatic basis so that a subscriber with one handset will be able to roam nationwide from carrier-to-carrier and from system-to-system without any

^{16/} In the Matter of Amendment of the Commission's Rules to Establish part 27, the Wireless Communications Service, GN Docket No. 96-228, 61 Fed. Reg. 59048 (November 20, 1996). Southern requests that this portion of these Comments be adopted by reference as Comments to GN Docket No. 96-228 which are due December 4, 1996.

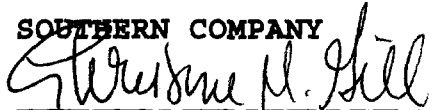
interruption in service or affirmative steps taken by the subscriber to continue or initiate service. Until this goal is reached, the automatic and manual roaming rules should not sunset. In this regard, Southern opposes those comments seeking early sunset of the rules.^{17/}

WHEREFORE THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission adopts rules requiring automatic roaming among "like" CMRS services until full carrier-to-carrier automatic roaming is technically and economically feasible. The Southern Company recommends adoption of proposed rules consistent with the views expressed herein.

Respectfully submitted,

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^{17/} Vanguard at 8.